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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,267	09/18/2006	Masaru Ishino	023174-0176	6446

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FOLEY AND LARDNER LLP
SUITE 500
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WASHINGTON, DC 20007

EXAMINER

GALLIS, DAVID E

ART UNIT	PAPER NUMBER
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1625

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<i>Advisory Action Before the Filing of an Appeal Brief</i>	Application No. 10/593,267	Applicant(s) ISHINO ET AL.	
	Examiner David Gallis	Art Unit 1625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 12 April 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 1. Claims 1 through 3, 5 and 6 are pending. Applicants' claim to foreign priority from application JAPAN 2004-082144 filed March 22, 2004 is acknowledged. Furthermore, priority has been perfected with the priority document translation filed April 12, 2010. Applicant's arguments filed April 12, 2010 have been entered and carefully considered.

Prior Rejections

2. With regard to the prior rejection of claims 1 through 3, 5 and 6 under the under 35 U.S.C. 103(a), Applicants argue that Wu et al. teaches away from the instantly claimed invention, and that the instantly claimed methods produce unexpected desirable results. Applicants' arguments are not found to be persuasive. Wu et al. teach a method for producing linear alkene oxide (of which propylene is an alkene) using H₂O₂ and a Ti-MWW catalyst with the same XRD pattern as the catalyst instantly claimed (the two are the same). for reasons of record. There is no substantial difference between the XRD data reported for the instant materials and that taught by Wu et al. (see page 7, Fig. 1). Therefore it is obvious that the materials are substantially the same. Wu et al. also teach that the catalyst "shows more excellent catalytic activity on liquid-phase epoxidation of linear alkenes than TS-1 and Ti-Beta" (see page 3, 2nd paragraph). Abekawa et al. remedies the deficiency Wu by teaching the epoxidation of propylene with hydrogen peroxide using a Ti-MWW catalyst in a variety of solvents teaching the use of tert-butyl alcohol (see pages 2 and 3, Examples 1 through 8; page 2, [0020]). Motivated by the observation by Wu et al. that the Ti-MWW catalyst is excellent applied to linear alkenes (Wu et al. do not distinguish between non-calcined and calcined material in that statement), it would be obvious to the practitioner in the art to apply the catalyst to the method of Abekawa et al.. The combination of Wu et al. and Abekawa et al. remedy the deficiency of a non-calcined catalyst in the method of Abekawa et al.. Therefore, the rejection of claims 1 through 3, 5 and 6 as obvious over Wu et al. in view of Abekawa et al. is not overcome by applicant's arguments.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

/Janet L. Andres/
Supervisory Patent Examiner, Art Unit 1625